

**229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1879 of 2016(O&M)

Date of decision : 31.07.2018

Vinay Kumar

..... Appellant

versus

Smt.Rekha Devi and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Jitender Nara, Advocate for the appellant.

None for respondents No.1 and 2.

Mr.Vinay Kumar Rao, Advocate for respondent No.3.

Mr. Rao Ajender Singh, Advocate for respondent No.4.

Mr.M.B.Jain, Advocate for respondent No.5.

REKHA MITTAL , J. (ORAL)

CM-7092-CII of 2016

Heard.

Allowed as prayed for. Delay of 18 days in refiling the appeal stands condoned.

CM-7091-CII of 2016

Reply to the application for condonation of delay on behalf of the insurance company filed in the Court, is taken on record.

Heard.

Allowed as prayed for. Delay of 246 days in filing the appeal stands condoned.

FAO No. 1879 of 2016

The present appeal directs challenge against award dated

03.03.2015 passed by the Motor Accidents Claims Tribunal, Rewari whereby compensation has been awarded on account of death of Shiv Lal in a motor vehicular accident that took place on 22.05.2013.

The instant appeal has been preferred by the registered owner of motor cycle bearing No. HR-13-F/0320 (alleged offending vehicle) to express his grievance that as the vehicle was sold by him to Vinit Kumar-respondent No.4 prior to the occurrence, liability to pay compensation cannot be fastened upon him. Another submission made by counsel is that the insurance company has been exonerated of liability to pay compensation as driver of the offending vehicle was held to be not possessing a valid and effective licence to drive a two-wheeler i.e. motor cycle in question. It is argued with vehemence that if the driver was not possessing a valid licence to drive the two-wheeler, the insurance company cannot escape liability to pay compensation to the claimants though it may be entitled to press for right of recovery against the insured.

Counsel representing the insurance company has supported findings of the Tribunal exonerating the insurance company of liability to pay compensation as driver of the motor cycle was having licence Ex..R1 valid for LMV/NT, Car, LMV-Transport, TRV (Rigid Chasis) and TRV(PSV Bus) only.

I have heard counsel for the parties, perused the paper book particularly the award.

Be that as it may, it is undisputed position of the case that on the day of occurrence i.e. 22.05.2013, the appellant was the registered owner of the vehicle in question, therefore, he cannot escape his liability to pay compensation on the plea that the vehicle was sold by him to Vinit

Kumar prior to the occurrence in question. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Naveen Kumar v. Vijay Kumar and others, 2018(2) RCR(Civil) 74.**

The second contention raised by counsel for the appellant that the insurance company cannot escape its liability to pay compensation to the claimants is meritorious and deserves acceptance. Even if driver of the offending vehicle did not possess a licence to drive two wheeler and the insured is guilty of violating the terms and conditions of the insurance, insurance company is liable to pay compensation to the claimants but would have a right of recovery against the insured after satisfying the award. In this context reference can be made to judgment of Hon'ble the Supreme Court **National Insurance Co.Ltd. v. Swaran Singh and others 2004(3) SCC 297** and **Pappu and others v. Vinod Kumar Lamba and another 2018(1) PLR 425.**

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The appellant shall be liable to pay compensation to the claimants being the registered owner of the vehicle in question. He would be jointly and severally liable to pay compensation along with Subhash Kumar, driver of the offending vehicle and insurer of the vehicle in question but subject to the rider that the insurance company shall have the right of recovery against the insured after satisfying the claim of victim(claimants).

No order as to costs.

(**REKHA MITTAL**)
JUDGE

31.07.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No